



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TOWN OF DAYTON
FOR
DAYTON WATER & WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0090085**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Dayton, regarding the Dayton Water & Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Dayton" means the Town of Dayton, a political subdivision of the Commonwealth of Virginia. Dayton is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" or "Site" or "Plant" means the Dayton Water & Wastewater Treatment Plant that provides potable water to the Town of Dayton and is located at the intersection of Bowman Road and W. View Street in Dayton, Virginia, from which discharges of treated wastewater occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0090085, which was issued under the State Water Control Law and the Regulation on January 1, 2014 and which expires on December 31, 2018.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present

or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Dayton owns and operates the Plant. The Permit allows Dayton to discharge treated wastewater from the Plant, to Cooks Creek, in strict compliance with the terms and conditions of the Permit.
2. Cooks Creek is located in the Potomac & Shenandoah River Basin. Cooks Creek is listed in DEQ's 305(b) report as impaired for E. coli, fecal coliform and Benthic-Macroinvertebrate Bioassessments. The source of impairment is not known.
3. On September 21, 2015, DEQ staff performed a reconnaissance inspection at the Plant in response to a report by the Town of Dayton of a fish kill in Cooks Creek. Staff conducted an assessment of the reach of Cooks Creek impacted by this event and counted 1,266 dead fish, 1186 of which were minnows.
4. The Regulation at 9VAC25-31-50.A. states that "[E]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to:
 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”
5. Dayton indicated in its DMR submitted for the month of June 2015 that it exceeded TSS discharge limitations contained in Part I.A.1 of the Permit.
6. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, ...it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
7. Based on the results of the September 21, 2015 inspection and the June 2015 DMR, the Board concludes that Dayton has violated the Va. Code, the Regulation and the Permit.
8. On October 5, 2015, DEQ issued Notice of Violation No. W2015-10-V-0002 to Dayton for the violations noted in paragraphs 3 and 4 above.
9. On January 1, 2016, DEQ staff met with a Plant representative. He reported that the Plant microfiltration units are periodically cleaned with a caustic and detergent solution. Automatic valves route this cleaning solution to a tank for neutralization. After neutralization, the cleaning solution is routed to the municipal sewer. During a routine automated cleaning on the weekend prior to September 21, 2015, one of the automatic valves failed and the cleaning solution discharged directly to Cooks Creek. The valve has been replaced.
10. On February 18, 2016, a meeting was held at the Plant to discuss the equipment failure that led to the September 2015 fish kill. In addition to a walkthrough of the process, interim measures, including the development of operating procedures to address overflow prevention were discussed.
11. Cooks Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
12. The Department has issued coverage under no permits or certificates to Dayton other than under the Permit which does not allow discharges of cleaning solutions.
13. In order for Dayton to complete its return to compliance, DEQ staff and representatives of Dayton have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dayton, and Dayton agrees to:

1. Perform the actions described in Appendix A of this Order;
2. Pay a civil charge of \$4,550.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
3. Reimburse DEQ \$216.31 for DEQ fish kill investigative costs within 30 days of the effective date of the Order; and
4. Reimburse DGIF \$137.65 for DGIF fish replacement costs within 30 days of the effective date of the Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check);
2. the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check);

and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Dayton shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dayton for good cause shown by Dayton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2015-10-V-0002 dated October 5, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Dayton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Dayton consents to venue in the Circuit Court of Rockingham County for any civil action taken to enforce the terms of this Order.
5. Dayton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Dayton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dayton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dayton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dayton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will

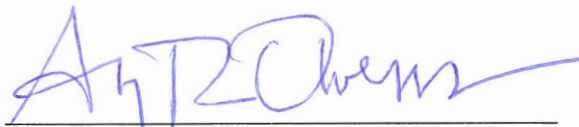
result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dayton. Nevertheless, Dayton agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after Dayton has completed all of the requirements of the Order;
 - b. Dayton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dayton.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dayton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Dayton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dayton certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dayton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dayton.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Dayton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of July, 2016.



Amy T. Owens, Regional Director
Department of Environmental Quality

The Town of Dayton voluntarily agrees to the issuance of this Order.

Date: May 11, 2016 By: Bobby Popowicz, Town Manager
Bobby Popowicz (Title)
Town of Dayton

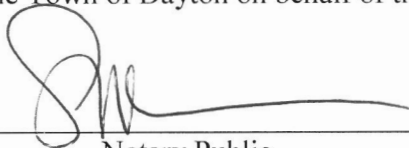
Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this 11th day of

May, 2016, by Bobby Popowicz who is

Administrator of the Town of Dayton on behalf of the Town.



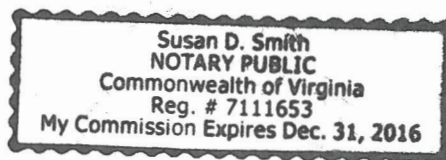
Notary Public

7111653

Registration No.

My commission expires: December 31, 2016

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Spill Prevention

- a. Within 30 days of the effective date of this Order, Dayton shall submit to DEQ a detailed Corrective Action Plan (CAP) addressing how Dayton will permanently prevent releases of cleaning solution due to automatic valve failure.
- b. Upon DEQ approval of the CAP, Dayton shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Dayton shall complete the CAP in accordance with its terms.
- c. Within 30 days of the end of each calendar quarter, reports detailing progress on implementing the CAP shall be submitted to DEQ. Reports shall be submitted until completion of the approved CAP, upon written request by Dayton and written concurrence from DEQ.

2. Contact

Unless otherwise specified in this Order, Dayton shall submit all requirements of Appendix A of this Order to:

Karen Gail Hensley, P.E.
Enforcement Team Leader
Valley Regional Office
VA Dept. of Environmental Quality
4411 Early Road, Harrisonburg VA
Office: 540.574.7821 FAX: 540.574.7878
karen.hensley@deq.virginia.gov
Mail: P.O. Box 3000, Harrisonburg VA 22801